

HEARING DATE AND TIME: SEPTEMBER 3, 2013 AT 2:00 P.M. (EST)
OBJECTION DEADLINE: AUGUST 29, 2013 AT 5:00 P.M. (EST)

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**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

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In re:

NEW YORK SPOT, INC.

Chapter 11

Case No. 12-48530 (CEC)

Debtor.

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**DEBTOR'S APPLICATION FOR AN ORDER SCHEDULING
A HEARING APPROVING THE SECOND AMENDED
DISCLOSURE STATEMENT AND A HEARING CONFIRMING
THE SECOND AMENDED PLAN OF REORGANIZATION**

**TO THE HONORABLE CARLA E. CRAIG,
CHIEF UNITED STATES BANKRUPTCY JUDGE:**

New York Spot, Inc., the debtor and debtor-in-possession ("Debtor"), by its attorneys, Law Offices of David Carlebach, as and for its Application for an Order Scheduling a Hearing Approving the Second Amended Disclosure Statement with respect to the Second Amended Plan and, if applicable, a Hearing Confirming the Second Amended Plan of Reorganization, respectfully represents as follows:

I. GENERAL

New York Spot, LLC., the debtor herein (the “Debtor” or “Movant”), by it’s attorneys, the Law Office of David Carlebach, Esq., as and for its Application for an Order Seeking Approval the Second Amended Disclosure Statement, respectfully represents as follows:

II. JURISDICTION

1. Jurisdiction over this application is vested in the United States District Court for this District pursuant to Sections 1334 of Title 28 of the United States Code (the “Judicial Code”).

2. This application has been referred to this Court for consideration pursuant to §157 of the Judicial Code and the Standing Order of Referral of Cases to Bankruptcy Judges (E.D.N.Y. August 8, 1986 (Weinstein, C.J.))

3. This is a core proceeding arising under Title 11 of the United States Code. See, 28 U.S.C. §157(b)(1). The statutory predicates for the relief sought herein are Sections 105, 1121, 1125, 1126, 1128 and 1129 of the Bankruptcy Code and Rules 2002, 3016, 3017 and 3020 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

4. Venue of this motion in this district is proper pursuant to Section 1409 of the Judicial Code.

III. STATEMENT OF FACTS

5. On December 18, 2012, the Debtor filed a voluntary petition (the “Petition Date”) under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Eastern District of New York.

6. The Debtor is primarily in the business of ownership of real estate, specifically the property located at 442 West 22nd Street, New York, New York 10010 (the “Property”). The Property is a four story single room occupancy building containing 23 Class B apartment units.

7. Prior to the filing of the Petition a foreclosure action was filed against the Debtor in the Supreme Court of the State of New York, New York County captioned as “*Intervest National Bank v. New York Spot Inc., Yehuda Nelkenbaum, NCC Capital, LLC, New York State, New York City, Charles Neiss, et al.*”, Index No. 650877/2010 (the “Foreclosure Action”). On September 30, 2010, the court in the Foreclosure Action entered an order appointing Gregory Soumas, Esq. as the receiver (the “Receiver”) of all rents and profits of the Property. After qualifying as Receiver, the Receiver entered the Property, took possession thereof as Receiver.

8. Following the Petition Date, pursuant to §543(d), the Court permitted the Receiver to continue in possession and control of the Property.

9. In the interim, the Debtor and the secured creditor have filed competing plans and disclosure statements.

10. By Order dated July 26, 2013, the Court ordered the Debtor to file its Second Amended Chapter 11 Plan of Reorganization and Second Amended Disclosure Statement (the “Second Amended Plan and Second Amended Disclosure Statement”) by July 29, 2013. The Court

also imposed on the Debtor the requirement to include detailed evidence of feasibility in its Amended Plan and Disclosure Statement. The Court also permitted the Debtor to move by Order to Show Cause to seek to participate in the existing plan process of the Secured Creditor. The Debtor filed its Order to Show Cause seeking the oforestated relief.

12. In that connection, the Court entered an Order dated August 14, 2013 directing the following:

- a. That on or before August 19, 2013, the Debtor Shall file a motion seeking approval of its proposed Second Amended Disclosure Statement, filed July 29, 2013;
- b. that a hearing to consider approval of the Second Amended Disclosure pursuant to 11 U.S.C. § 1125 and Bankruptcy Rule 3017 will be held on September 3, 2013 at 2:00 p.m. (The “Second Amended Disclosure Statement Hearing”);
- c. that the Second Amended Plan, Second Amended Disclosure Statement Hearing, notice of the time within which acceptances or rejections of the Plan may be filed, notice of the time fixed for filing objections, ballots, and a copy of this Order, in accordance with Bankruptcy Rule 3017(a) (d), shall be served on or before August 19, 2013;
- d. that August 29, 2013, at 5:00 p.m., shall be the deadline for the filing objections to the Second Amended Disclosure Statement or the Second Amended Plan, and for the Debtor to receive acceptances and rejections of the Second Amended Plan; and

- e. that proof of service of documents in accordance with this Order shall be filed on or before August 20, 2013.

IV. RELIEF SOUGHT

A. The Second Amended Disclosure Statement Hearing

13. “An acceptance or rejection of a plan may not be solicited . . . from a holder of a claim or interest . . . unless, at the time of or before such solicitation, there is transmitted to such holder the second amended plan, and a written second amended disclosure statement approved after notice and a hearing, by the court as containing adequate information.” 11 U.S.C. § 1125(b). A copy of the Second Amended Plan and Second Amended Disclosure Statement will be served with the order.

14. Pursuant to this Court’s August 14, 2013, Order, the Debtor hereby requests that the Court approve the Disclosure Statement. The Debtor believes the Disclosure Statement contains adequate information and should be approved by this Court. The Debtor further requests that the Confirmation Hearing be scheduled to proceed immediately subsequent to the Disclosure Statement Hearing.

15. As the Debtor is proceeding with a hearing on the adequacy of the information contained in its Second Amended Disclosure Statement, and immediately thereafter confirmation of its Second Amended Plan, Debtor is serving all parties with a copy of the executed Order and Notice of Hearing For Approval of the Second Amended Disclosure Statement and Confirmation

of the Second Amended Plan of Reorganization, in accordance with the Court's August 14, 2013, Order.

B. The Confirmation Hearing

16. The Bankruptcy Rules provide that "on or before approval of a disclosure statement, the court . . . may fix a date for the hearing on confirmation." Fed. R. Bankr. P. 3017(c). In the event no objections to the adequacy of the information contained in the Second Amended Disclosure Statement are filed, or in the event objections are filed and overruled by the Court, the Debtor requests that the Confirmation Hearing commence immediately upon the conclusion of the Second Amended Disclosure Statement Hearing. In the event that timely objections to the adequacy of the information contained in the Second Amended Disclosure Statement are filed and sustained by the Court at the Second Amended Disclosure Statement Hearing, the Debtor requests that the Court at that time consider rescheduling the Confirmation Hearing.

17. No previous application for the relief sought herein has been made to this Court or any other Court. As there are no novel issues of law in connection with the relief sought herein and the legal basis for same is set forth herein, the Debtor respectfully requests that the Court waive the requirement for the filing of a separate memorandum of law in support of this motion.

WHEREFORE, for all of the foregoing reasons, the Debtor seeks the entry of an order pursuant to §§105, 1121, 1125, 1126, 1128 and 1129 of the Bankruptcy Code and Bankruptcy Rules 2002, 3016, 3017 and 3020 (1) approving the Debtor's Second Amended Disclosure Statement, (2) scheduling a hearing on confirmation of the Debtor's Second Amended Plan of Reorganization, as appropriate, and for such other and further relief as is just and proper.

WHEREFORE, the Debtor respectfully requests that this Court grant the relief requested herein, and such further relief as this Court deems just and proper.

Dated: New York, New York
August 19, 2013

THE LAW OFFICES OF DAVID CARLEBACH, ESQ.
Attorneys for the Debtor

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